

**BOARD OF APPEALS CASE NO. 5094**

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**BEFORE THE**

**APPLICANT: Charles B. Rosseau, III**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to allow 5 lots on  
panhandles in the Agricultural District;  
4325 Federal Hill Road, Street**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 10/11/00 & 10/18/00**

**HEARING DATE: November 27, 2000**

**Record: 10/13/00 & 10/20/00**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Charles B. Rosseau, is seeking a variance pursuant to Section 267-22G(4) of the Harford County Code, to create more than the permitted four (4) lots on panhandles (five proposed) in an AG/Agricultural District.

The subject parcel is located at 4325 Federal Hill Road, approximately 2000 feet southwest of St. Clair Bridge Road. The property is more particularly identified on Tax Map 16, Grid 3D, Parcel 152. The parcel consists of 94.183 acres, is zoned AG/Agricultural and is entirely within the Fourth Election District.

Mr. Frank Richardson appeared on behalf of the Applicant and indicated that he was a land surveyor employed by the Applicant to create the proposed plat of the five (5) subject lots. (Attachment 2 to Staff Report). Referring to Attachment 2, the witness indicated that Lots 7, 8, 9, 10 and 11 are the five lots intended to be developed as panhandles. The original property from which these lots are being created had 11 development rights. There are 6 other lots created and five use a panhandle configuration. The witness testified that the terrain of the parcel is rolling and contains sensitive environmental features including mature forest areas. There is 116 feet of frontage available which will be shared by the proposed lots. The witness, again referring to Attachment 2, indicated the lack of any other reasonable access to a road for these lots. The witness actually resides within visual sight of the property and does not believe that any adverse impact will result from the proposed configuration.

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He concluded by stating that a denial of the grant would force the owner to either lose a development right or totally reconfigure access to create a cul-de-sac on the property eliminating panhandles.<sup>1</sup> The witness felt that such a requirement would not provide any benefits compared to panhandles and would create significant cost.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning. Mr. McClune testified that he agreed that the property was topographically unique and that the proposed lot configuration was designed to take into account sensitive existing environmental features. He did not believe any adverse impact would result from the creation of panhandles. Mr. McClune admitted that a public road could be constructed to create cul-de-sac configuration and accomplish a five lot utilization. In that case, no variance would be necessary. There would be substantial additional cost to the property owner and the County if this was required. Mr. McClune did not believe any benefit of a cul-de-sac existed that justified the incurrence of costs associated with such a configuration.

Ms. Dawn Bero appeared in opposition to the request. Ms. Bero expressed concerns that she was misled as to future development of this property at the time of her purchase. She lives on the lot designated Lot 1 on Attachment 2 which adjoins proposed lots 7, 8 and 11. The witness indicated that the existing driveway traverses the rear of her property near a children's play area and she is concerned that the safety of children at play would be jeopardized by the increased traffic on the driveway created by one additional lot. Additionally, there is a gate on the driveway which the witness said was locked at times which forced autos to go around the gate on to her property, a safety hazard at best. While the witness remained opposed to the application she stated that if the application were approved she would like to see the gate removed entirely and pull off areas added to the driveway to allow 2 cars to travel the driveway in opposite directions without the need to move to grassy areas along the drive.

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<sup>1</sup> Interestingly, this property could be configured to a cul-de-sac arrangement and create five lots, thus fully utilizing the development rights available. This would necessitate County road maintenance and would provide no mitigation compared to creation of these lots as a panhandle configuration. There would, of course, be a great deal of additional and perhaps, unnecessary cost, associated with a cul-de-sac configuration.

**CONCLUSION:**

The Applicant is seeking a variance pursuant to Section 267-22G(4) of the Harford County Code, to allow five (5) panhandle lots (four [4]permitted) in an AG/Agricultural zone.

Section 267-22G provides:

**Panhandle-lot requirements. Panhandle lots shall be permitted for agricultural and residential uses, to achieve better use of irregularly shaped parcels, to avoid development in areas with environmentally sensitive features or to minimize access to collector or arterial roads, subject to the following requirements:**

- (1) Except in Agricultural and Rural Residential Districts, with regard to any parcel, as it existed on September 1, 1982, not more than one (1) lot or five percent (5%) of the lots intended for detached dwellings, whichever is greater, and not more than ten percent (10%) of the lots intended for attached dwellings may be panhandle lots.**
- (2) Panhandles shall be a maximum of seven hundred (700) feet in length. The Zoning Administrator may grant a waiver of the maximum length where the topography, natural features or geometry of the parcel make a longer panhandle necessary.**
- (3) A common drive shall be constructed to serve any group of two (2) or more panhandle lots. Driveways for all panhandle lots shall access from the common drive.**
- (4) Groups not exceeding four (4) lots may have two (2) lots on panhandles in accordance with the following criteria. Panhandle lots and subdivisions shall have, as a minimum, the following width:**
  - (a) Single panhandles: twenty-five (25) feet.**
  - (b) Double panhandles: twelve and one-half (12½) feet each, for a total of twenty-five (25) feet.**
- (5) Where a common drive is required, the following shall apply:**
  - (a) Prior to or at the time of recordation of a panhandle subdivision, the owner shall also record subdivision restrictions that shall provide for the construction, type, responsibility for the same, including all costs, and use and maintenance of the common drive, which shall be applicable to all lots subject to the common-drive plan. The subdivision restrictions shall be reviewed and approved by the Department of Law prior to recordation to ensure that all lots subject to the common-drive plan will be subject to the restrictions upon recordation thereof for inclusion in the deeds of conveyance.**

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- (b) The Department of Planning and Zoning, with the advice of the Law Department, shall establish rules and regulations for the drafting of common-drive agreements.
- (c) The county shall bear no responsibility for the installation or maintenance of the common drive.”

The Harford County Code, pursuant to 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Hearing Examiner agrees that the property is topographically unique. Clearly the size of the lot, the lack of sufficient road frontage and the existence of sensitive environmental features all create a unique terrain presenting challenges to appropriate configuration of allowable development rights. Moreover, the Hearing Examiner does not agree with the Protestant that a fifth home on such a large tract of land would create sufficient traffic over and above that of four residences so as to constitute a traffic safety issue. The Hearing Examiner is, however, cognizant that automobiles do cross her property because of the existence of a useless gate and that the proposed driveway is close to the play area she described. These concerns can easily be addressed during the development process in a number of ways and the Hearing Examiner does not find that the creation of a fifth panhandle lot, by itself, creates any more hazard in the play area than that created by four lots which could be created without the need for any variance or other special treatment.

There was discussion regarding the ability of the property owner to configure the five lots by eliminating the panhandle configuration and creating a cul-de-sac at the end of a public road. While that is clearly a possibility, it does not yield any benefit to any property owners nor does it alleviate any of the traffic concerns of the Protesting land owner. It would add additional and significant cost to the project which appears unnecessary to the Hearing Examiner.

Maryland Courts have long recognized that “If property reasonably cannot be adapted to use in conformity with zoning ordinance restrictions due to unique circumstances, any

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hardship may be relieved through the variance procedure.” Wilson v. Mayor & Comm’rs of Town of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). To force the Applicant to resurvey the property, reconfigure in a manner that avoids the need for a variance, that is, create a public road and cul-de-sac or to forfeit a valuable development right when the circumstances unique to this property can be alleviated by allowance to create one additional panhandle, is not, in the opinion of the hearing Examiner, reasonable. In fact, to do so would, in the opinion of the hearing Examiner, be arbitrary and capricious and would constitute an unnecessary and unwarranted invasion of the basic rights of private property.

The Hearing Examiner recommends approval of the request subject to the following conditions:

1. The Applicant submit a preliminary plan to the Department of Planning and Zoning for review and approval through the Development Advisory Council. The preliminary plan shall configure the driveway in a manner that the traveled portion of the driveway is located as far from the rear property line and particularly the play area of Lot 1 as is practical and safe.
2. The driveway shall be further configured in such a manner to provide pull-off area sufficient in size and number as determined by the Department of Planning and Zoning to allow 2 vehicles to safely pass each other on the driveway.
3. That the existing stone gate be removed in its entirety.
4. That trees of sufficient size and growth potential be strategically planted along the driveway between the driveway and the Lot 1 property line to provide additional safety. Trees shall be planted as necessary to achieve this purpose and shall be submitted as part of an overall landscaping plan to the Department of Planning and Zoning for their review, recommendations and approval.

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5. That a final plat be submitted to the Department of Planning and Zoning for approval and recordation in the County Land Records.
6. That a common drive shall be utilized by all five(5) new lots. Lot 1 shall have the right to continue to use the driveway with the other five lots but, if Lot 1 elects to so use the driveway, then Lot 1, together with all other five lots shall enter into a common drive agreement.

**Date    DECEMBER 14, 2000**

**William F. Casey  
Zoning Hearing Examiner**